IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12750 of 2006
Date of decision:10.10.2006

M/s. Jai Ganesh Rice & general Mills, Jagadhri

....Petitioner

versus

State of Haryana and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

Ms.Ritu Bahri, DAG,Haryana, for the respondents.

JUDGMENT:

1. This petition has been filed against denial of refund under the provisions of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'the State Act') and Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act').

2. Case of the petitioner is that assessment in respect of his turnover was made by the assessing authority on 6.1.2004 under the State Act as well as the Central Act and additional demand was created. Subsequently, the said order was rectified by the assessing authority on 19.2.2004 and the demand was reduced. On appeal, demand of interest and penalty was set aside. The assessee, accordingly, applied for refund on 13.1.2005. Review application filed by the assessing authority was dismissed on 27.10.2005. The assessee filed a writ petition in this court on 17.8.2006 seeking direction for refund of Rs.1,74,955/-.

3. Notice of motion was issued and the reply has been filed. Stand taken on behalf of the State is that since interest and penalty under the State Act only was set aside, the refund in respect of the State Act had been allowed on 20.3.2006, while refund in respect of interest and penalty under the Central Act proceedings was not admissible.

4. We have heard learned counsel for the parties and perused the

record.

5. Opening and operative part of the order of the appellate authority are reproduced below:-

> "These are appeals against the orders dated 6.1.2004 passed by Assessing Authority, Jagadhri whereby levy of interest under section 25(5) and imposition of penalty under section 47 have been made under both the Acts. Points of law and facts being similar, these appeals are decided together in a single order."
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> "I have heard submissions of both. The conspectus of facts are that the appellant had purchased paddy on payment of purchase tax on the purchase value of paddy and deposited the amount of purchase tax alongwith the returns. At the time of filing the returns, he could not anticipate as to what will be the actual liability created after paddy was milled into rice and sold to DFSC. He could not deposit the differential tax when he filed sales tax returns with regard to rice sold by him to DFSC. The differential tax was deposited after adjustment of purchase tax which the appellant had paid at the time of purchase of paddy. Thus, the differential tax never came to the appellant. In fact, he deposited the differential tax on the finalization of sales tax assessment and thereafter claimed the same from the DFSC. Ratio of the judgment cited by the appellant (2004) 24 PHT 138 (STT Hr.) (Supra) is squarely applicable here wherein it has been held that dealer cannot be saddled with liability to pay interest on the amount of differential tax. In the backdrop of such situation when interest on the amount of differential tax cannot be levied, imposing penalty on the appellant under Section 47 cannot be held to be justified. With setting aside the order levying the interest, the penalty imposed under Section 47 gets redundant. As such, orders passed in respect of the year 1999-2K for levying interest under 25(5) and imposing penalty under Section 47 are set aside. The appeals are allowed accordingly."

5.1 The above order shows that the case of the assessee was that tax due as per return had been duly paid and since as the assessee could not anticipate actual liability, the assessee was not liable to pay interest and penalty as per earlier order passed by the Tribunal in **M/s Singla Rice Mills v. State of Haryana** (2004) 24 PHT 138 (STT Hr.).

5.2 The reasoning of the appellate authority was applicable in respect of liability under the State Act as well as the Central Act as appeals with regard to both were being considered. The assessing authority applied for review which was also dismissed and on the same grounds, refund is sought to be declined.

6. The view taken by the respondents for not refunding the amount, which clearly became due for refund, cannot be upheld once there is an order existing in favour of the petitioner by the appellate authority.

7. Accordingly, the writ petition is allowed and respondent No.2 is directed to calculate the refund afresh in the light of above observations, within three months from the date of receipt of a copy of this order.

8. The writ petition is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

Oct.10,2006 (Rajesh Bindal)
'gs' Judge